IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

STAMP REFERENCE No. 12 of 1993

For Approval and Signature:

HONOURABLE THE CHIEF JUSTICE Y.R.MEENA

HONOURABLE MR.JUSTICE D.A.MEHTA

HONOURABLE MR.JUSTICE A.S.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RANJANBEN CHUNILAL PUROHIT

Versus

CHIEF CONTROLLING REVENUE AUTHORITY

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Appearance :

Mr. R.K. Shah for the applicant

Mr. Sunit Shah, Government Pleader for the respondent

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CORAM : HONOURABLE THE CHIEF JUSTICE Y.R.MEENA

and

HONOURABLE MR.JUSTICE D.A.MEHTA

and

HONOURABLE MR.JUSTICE A.S.DAVE

Date :14/08/2007

CAV JUDGMENT

(Per : HONOURABLE MR.JUSTICE A.S.DAVE)

1 This reference is made in exercise of power under Section 56 of the Bombay Stamp Act, 1958 for the opinion of this Court on the following questions of law.

> "[i] Whether the deed under reference given for registration under No.2840/1984 to Sub-Registrar, Nadia's Office on 9.7.1984 is eligible for exemption from stamp duty according to Government Resolution No.GHM/75/123/M/STP/1474/926-H.D. Dated 12.6.1975.
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> [ii] Whether the deed under reference given for registration under No.2840/1984 to Sub-Registrar, Nadiad's Office on 9.7.1984 is liable for stamp duty as per Annexure I of Article 36 of mortgage deed under the Bombay Stamp Act, 1958 ?"

2 It would be necessary to give certain facts in nutshell, so that the questions of law referred can be considered in correct perspective.

2.1 The applicant herein is an employee of Nadiad Municipality, Nadiad and, at the relevant point of time, she was serving in a school administered by the Nadiad Municipality and had taken loan of Rs.52,000/- for house building. A mortgage deed was submitted for registration to the Sub-Registrar's Office, Nadiad, and it was not processed further on the ground that the applicant, being an employee of

the Nadiad Municipality, was not entitled for exemption under Section 33 of the Bombay Stamp Act, and the issue was referred to the District Collector, Kheda, who passed order dated 3rd August 1985 for recovery of stamp duty deficit of Rs.4160 and penalty of Rs.500 under Section 39 of the Act.

2.2 Being aggrieved and dissatisfied with the order dated 3rd August 1985 passed by the Collector, the applicant preferred an appeal under Section 53(1) of the Act to the Chief Controlling Revenue Authority and the Appellate Authority confirmed the order of the Collector that the applicant, being an employee of Nadiad Municipality, was not entitled for exemption from stamp duty on the mortgage deed of house building advance, since, the Chief Officer, Nadiad Municipality, issued a certificate that the applicant was an Assistant Teacher in a school run by the Nadiad Municipality. The aforesaid order came to be passed by the Appellate Authority on 7th May 1988.

2.3 An application was preferred under Section 54(1) of the Act before the Chief Controlling Revenue Authority for making a reference to the High Court. However, since the said application for reference has not been filed within the statutory limitation of 90 days, an application of condonation of delay was filed, which was rejected by the Competent Authority. Hence, the applicant filed Special Civil Application No.7518 of 1998, wherein, this Court, by order dated 18th December 1990, remanded the matter to the Chief Controlling Revenue Authority for taking decision afresh and, accordingly, this reference has been made to this Court.

3 Shri R.K. Shah, learned counsel for the applicant, submitted that the applicant, being an employee of the Municipality of Nadiad, is

entitled for exemption from payment of stamp duty on mortgage deed executed for availing of housing loan on the the basis that, she, being an employee of the Municipality, is entitled for equal treatment like any other employee of the panchayat service of the State of Gujarat, who are specifically exempted by Notification dated 12th June 1975 issued by the Revenue Department in exercise of powers conferred by clause (a) of Section 9 of the Bombay Stamp Act, 1958. Learned counsel has further submitted that even in other Municipalities, where similarly situated employees like the applicant were serving, no stamp duty was collected or paid and, therefore, recovery of stamp duty from the applicant is clearly erroneous, illegal and violative of Article 14 of the Constitution of India.

3.1 Learned counsel for the applicant has, thus, emphasized equal treatment to the applicant an employee of the Nadiad Municipality serving as an Assistant Teacher like any other employee of the Gujarat Panchayat Service, who stands exempted by virtue of Notification dated 12th June 1975. Learned counsel has further submitted that the State cannot discriminate between the employees, whether such employee belongs to Municipality or Panchayat, and the Municipality being the local authority and governed by the rule of law, and the applicant also being a primary teacher employed by the Primary Education Samiti of Nadiad Municipality constituted under the Bombay Primary Education Act, 1947, deserves exemption of stamp duty on the said mortgage deed on the same basis as is given to any other employee of the panchayat service of the State of Gujarat

4 Learned Government Pleader appearing for the State has opposed the claim of the applicant and has submitted that, even before referring the matter for the opinion of this Court, the Competent Authority, in

clear terms, observed that, if the applicant thinks proper, she may approach her office or department for reimbursement so as to claim the benefit of circular dated 11.2.1986 issued by the Department of Education, which confers certain benefits on primary teachers of authorized municipal corporations/nagarpalikas, i.e. Municipalities, by applying various orders/ government resolutions/circulars issued from time to time. The above resolution of the Education Department is issued, according to the learned Government Pleader, giving the benefits to the primary teachers of municipalities on the basis of various Government Resolutions/Circulars and orders, etc. and made applicable from the date mentioned therein on such terms and conditions to the primary teachers of authorized municipal corporations/nagarpalikas, i.e. Municipalities. Since the applicant has not availed of the above remedy and in view of the fact that exemption from payment of stamp duty on the mortgage deed of housing loan is not granted by issuance of a notification in exercise of power under Section 9 of the Bombay Stamp Act, 1958, it is submitted that the applicant is not entitled to the benefit, as claimed.

4.1 Learned Government Pleader has further submitted that protection under Article 14 of the Constitution of India cannot be conferred upon the applicant and there is no discrimination since the Panchayats are being governed by different set of Rules and Regulations.

5 We are unable to persuade ourselves with the submission of the learned counsel for the applicant for the simple reason that, as directed by the Chief Controlling Revenue Authority, Ahmedabad, the applicant has failed to approach her own department for claiming the benefit of reimbursement, as stipulated in by the Government Resolution dated 11.2.1986, since no order or notification has been issued in exercise of

power under Section 9 of the Bombay Stamp Act, 1958 exempting the employees of the municipalities.

6 If the submissions of of the learned counsel for the applicant are examined in the context of 'equal treatment' by the State Government in the matter of exemption of stamp duty to the teachers of the panchayat service and not conferring such benefits to the teachers of municipalities and, thus, the action being violative of Article 14 of the Constitution of India, on examination of statutory provisions governing the service conditions, it is apparent that both sets of employees, namely, the employees of the municipalities and the employees of the panchayats, are governed by different rules governing their service conditions. Chapter XIII of the Gujarat Panchayats Act, 1993 provides for provisions relating to services of employees of the panchayats. Section 227 provides that panchayat service are regulated by the rules. Section 228 provides for pay and allowances of employees of panchayat service, Section 229 about mode of appointment and Section 230 about allocation of officers and servants of panchayat services. Even in the erstwhile Gujarat Panchayats Act, 1961, under Chapter 11, all similar provisions were made under sections 203, 204, 205 and 206 of the Act of 1961.

7 Considering the above set of Rules governing the service conditions of employees of the panchayat service, the same cannot be equated with the service conditions of the applicant being an employee of the Municipality, which is governed by different set of Rules and Regulations under the Bombay Primary Education Act and Rules and, unless and until a notification under Section 9 of the Bombay Stamp Act, 1958 is issued, the Court cannot give any direction in this regard directing the Chief Controlling Revenue Authority to exempt the applicant from payment of stamp duty.

8 As regards the contention of the learned counsel for the applicant about the benefits given to the employees of the Municipality by some other Municipalities and no recovery is ordered, we are afraid, if by an act of an authority, certain benefits are conferred upon an individual without following due procedure of law or contrary to the statutory provisions, the same cannot be extended in exercise of any power of the High Court, may be under Article 226 of the Constitution of India or while opining on a question of law in a reference under Section 56 of the Bombay Stamp Act.

9 Article 14 of the Constitution of India which is genus of the doctrine of equality declares that the State shall not deny to any person equality before the law or the equal protection of laws within the territory of India. In the last 57 years, the Courts have given different dimensions to the doctrine of equality so as to bring every arbitrary action of the State and its functionaries within the ambit of the Court's power of judicial review. The ever expanding horizon of the equality clause has also encouraged filing of large number of petitions in which the petitioners seek relief solely on the premise that in the case of some other person the public authority has given relief. Till recently, the courts had enforced equality clause and entertained the claim of such petitioners without going into the question whether the action taken by the State and/or public authority in the other case or order passed in favour of some other person is in consonance with law. But this trend has been reversed by the judgments of the Supreme Court in Chandigarh Administration v. Jagjit Singh, AIR 1995 SC 705, Secretary, Jaipur Development Authority v. Daulat Mal Jain, (1997) 1 SCC 35, Gursharan Singh v. New Delhi Municipal Committee, (1996)2 SCC 459, Faridabad CT. Scan Centre v. D.G. Health Services,

(1997) 7 SCC 752 and Style (Dress Land) v. Union Territory, Chandigarh, (1999) 7 SCC 89. The facts of Jagjit Singh's case were that the respondents who had given the highest bid for 338 sq.yds. plot in Sector 31A, Chandigarh defaulted in paying the price in accordance with the terms and conditions of allotment. After giving him opportunity of showing cause, the Estate Officer cancelled the lease of the plot. The appeal and the revision filed by him were dismissed by the Chief Administrator and Chief Commissioner, Chandigarh respectively. Thereafter, the respondent applied for refund of the amount deposited by him. His request was accepted and the entire amount paid by him was refunded. He then filed a petition for review of the order passed by the Chief Commissioner, which was dismissed. However, the officer concerned entertained the second review and directed that the plot be restored to the respondent. The latter did not avail benefit of this unusual order and started litigation by filing writ petition in the High Court, which was dismissed on March 18,1991. Thereafter, the respondent again approached the Estate Officer with the request to settle his case in accordance with the policy of the Government to restore the plots to the defaulters by charging forfeiture amount of 5%. His request was rejected by the Estate Officer. He then filed another writ petition before the High Court which was allowed only on the ground that in another case pertaining to Smt.Prakash Rani, Administrator had restored the plot even after her writ petition was dismissed by the High Court. The Chandigarh Administration challenged the order of the High Court by filing petition for special leave to appeal. While reversing the order of the High Court, their Lordships of the Supreme Court observed as under:-

> "We are of the opinion that the basis or the principle, if it can be called one, on which the writ petition has been allowed by

the High Court is unsustainable in law and indefensible in principle. Since we have come across many such instances, we think it necessary to deal with such pleas at a little length. Generally speaking, the mere fact that the respondent-authority has passed a particular order in the case of another person similarly situated can never be the ground for issuing a writ in favour of the petitioner on the plea of discrimination. The order in favour of the other person might be legal and valid or it might not be. That has to be investigated first before it can be directed to be followed in the case of the petitioner. If the order in favour of the other person is found to be contrary to law or not warranted in the facts and circumstances of his case, it is obvious that such illegal or unwarranted order cannot be made the basis of issuing a writ compelling the respondent-authority to repeat the illegality or to pass another unwarranted order. The extraordinary and discretionary power of the High Court cannot be exercised for such a purpose. Merely because the respondent-authority has passed one illegal/unwarranted order, it does not entitle the High Court to compel the authority to repeat that illegality over again and again. The illegal/unwarranted action must be corrected, if it can be done according to law indeed, wherever it is possible, the court should direct the appropriate authority to correct such wrong orders in accordance with law - but even if it cannot be corrected, it is difficult to see how it can be made a basis for its repetition. By refusing to direct the respondent-authority to repeat the illegality, the court is not condoning the earlier illegal act/order nor can such illegal order constitute the basis for a legitimate complaint of discrimination. Giving effect to such pleas would be prejudicial to the interests of law and will do incalculable mischief to public interest. It will be a negation of law and the rule of law. Of course, if in case the order in favour of the other person is found to be a lawful and justified one it can be followed and a similar relief can be given to the petitioner if it is found that the petitioner's case is similar to the other person's case. But then why examine another person's case in his absence rather than examining the case of the petitioner who is present before the court and seeking the relief. It is not more appropriate and convenient to examine the entitlement of the petitioner before the court to the relief asked for in the facts and circumstances of his case than to enquire into the correctness of the order made or action taken in another person's case, which other person is not before the Court nor is his case. In our considered opinion, such a course - barring exceptional

> situations - would neither be advisable nor desirable. In other words, the High Court cannot ignore the law and the well-accepted norms governing the writ jurisdiction and say that because in one case a particular order has been passed or a particular action has been taken, the same must be repeated irrespective of the fact whether such an order or action is contrary to law or otherwise. Each case must be decided on its own merits, factual and legal, in accordance with relevant legal principles. The orders and actions of the authorities cannot be equated to the judgments of the Supreme Court and High Courts nor can they be elevated to the level of the precedents, as understood in the judicial world. (What is the position in the case of orders passed by authorities in exercise of their quasi-judicial power, we express no opinion. That can be dealt with when a proper case arises)."

Similar ratio is laid down by Their Lordships in other cases also.

10. Considering the above aspects, question No.[i] is answered in the negative, whereas question No.[ii] is answered in the affirmative, i.e. against the applicant and in favour of the State.

11 It is open to the applicant to approach the Department of Education for seeking benefits under Resolution dated 11.2.1986 issued by the Department of Education.

12. This reference stands disposed of accordingly. There shall no order as to costs

(Y.R. MEENA, C.J.)

(D.A. MEHTA, J.)

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(ANANT S. DAVE, J.)

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